

Dear Sir/Madam,

Re: Options for reform of the *Owners Corporations Act 2006*

Haven; Home, Safe (HHS) are pleased that Consumer Affairs Victoria is addressing potential legislative changes that could be made to the Owners Corporations Act and welcomes the opportunity to provide feedback.

HHS has vast experience of owners corporations on a variety of levels whereby we have purchased properties that already had established owners corporations Management in place, having high-rise developments where we set up the owners corporation and purchased the services of an owners corporation manager or, having properties that consist of two or three units on a block where we manage it ourselves along with the other owners and where there is no owners corporation manager.

HAVEN; HOME, SAFE:

Haven; Home, Safe (HHS) is an integrated homelessness service provider and registered Housing Association. For more than 20 years, in our current form, we have been helping and housing people in need through the provision of innovative, multi-dimensional affordable housing solutions and delivery of a diverse range of case management services. We offer a continuum of services, from responses to emergencies such as fire or flood, to the provision of emergency, transitional and longer-term affordable housing.

DISCUSSION:

1. REGULATION OF OWNERS CORPORATIONS MANAGERS

1.1 Licensing versus registration of owners corporation managers

Overall, HHS' preferred option is Option 1B – Enhance the current registration scheme for professional owners corporation managers. HHS agrees with the eligibility criteria put forward in both 1A and 1B and supports the notion that training is beneficial, but believes that introducing Option 1A would have significant costs associated with its implementation not only for the government but possibly for property owners as well. Due to Owners Corporations managers, possibly passing on the fees of licensing and training costs to property owners it may end up unaffordable for owners to have professional owners corporation management. To prevent this situation, HHS proposes that it would be beneficial if there could be preventative measures put in place to counteract the fees being automatically passed on to lot owners.

1.2 Maintaining the knowledge and skills of owners corporations managers

HHS believes that the Owners Corporation Act being a piece of legislation requires a professional body that understands and can interpret that information when there are any changes, to ensure that there is no misinformation such as when relying on the information for the tribunal or court. Getting that information/training through a government funded and regulated provider guarantees that it is correct and current. HHS' preference is for Consumer Affairs to deliver the training unless there is a government body put in place that can regulate registered training providers.

HHS believes that rather than making professional development mandatory better outcomes would come from altering the culture of the owners corporation so that it views ongoing professional development as the best practice to get business and encourages owners corporation managers to voluntarily engage in ongoing and targeted information and, training programs. As articulated in Option 2B – We see there to be optimal benefit to deliver an ongoing and targeted information and training program for owners corporation managers in partnership with industry associations.



In addition, Option 2B is more flexible and can be targeted to emergent issues. Though voluntary, there may be some way of tying it to the professionalism of the owners corporation. For example, through promoting that owners corporation managers undertake industry recognised training on a regular basis or get a CAV endorsement that they have undertaken professional development in this area.

HHS believes it would be difficult and expensive to mandate continued professional development and that as the programs would be set programs they would not necessarily pick up changes in legislation as they occur.

Although there may be little evidence that professional development has cost effective benefits there is evidence that training can improve business performance, profit and staff morale. Evidence also exists that owners rely on owners corporation managers to keep them up-to-date with changes in the legislation. Without the owners corporation managers, the owners would have to seek out and or do their own training around locating that information themselves.

Again, HHS advocates training being developed and delivered by organisations like CAV that can deliver targeted, up to date and relevant information. Providing professional development annually is preferred as is various forms of training delivery.

1.3 Unfair terms and termination of management contracts

HHS views Option 3A – Prohibit unfair terms in management contracts, as being the most beneficial. HHS agrees with all the elements of Option 3A, specifically, that the roll over of contracts should be restricted to no more than three years to give owners corporation managers’ stability. This addresses the risk of apathetic owners losing management and becoming dysfunctional, a reality particularly for organisations like HHS who manage multiple properties. HHS backs having some sort of roll over clause as it relies on the continuation of owners corporations management to maintain the functional arrangements. It would be a huge administrative burden if every 12 months HHS had to try to find a new owners corporation manager.

In relation to Termination clauses, in order to be fair they should be consistent with any other legislative requirement for similar contracts under the law and have some connection to Australian consumer law.

Option 3A includes such provisions. Termination notice periods need to be no more than three months and no less than one month. Owners should not be subject to excessive early termination fees by owners corporation managers. Defining early termination, if we restricted roll over to be no more than a set period of three years, then early termination can only be after the first year and before the end of the three-year contract. In order to give transparency to the owners corporation managers, the owners should substantiate any breach of contract to apply the termination in line with other contract legislation. If there has been a breach of the owners corporation management then the owners corporation manager should be afforded the information about what the breach is and given an opportunity to remedy the breach. If the breach cannot be remedied then a termination notice can be given. HHS believe that management should not be able to be terminated without an opportunity to address the breach. HHS maintains that a ‘without cause’ is therefore not appropriate.

1.4 Duties and obligations of owners corporation managers

In relation to the stand-alone option for conflict of interest, HHS agrees with Option 4A – Expand the obligations of owners corporation managers regarding procurement of goods and services, voting on owners corporation matters, and access to financial documents. HHS believes Option 4A provides the appropriate level of transparency when there is any management relationship with a client that involves the procurement of goods and services involves money being spent and distributed. Option 4A is just good financial management and should involve a transparent process. In terms of alternative options of money held on trust, HHS supports Option 4B – Restrict the pooling of unrelated owners corporations’ funds, on the grounds that there should not be a pooling of funds across owners corporations. HHS maintains that each owners corporation member is entitled to know where their money is going and that it is being spent on their properties. As an owner, HHS would not expect an owners corporation manager who was managing multiple owners corporations to borrow money from pooled funds to make commitments to other owners corporations. An effective manager would ensure that the fees charged are enough to cover the liabilities of the



owners corporation. It would be very difficult for the owners corporation to keep track of how they accumulated and spent the pooled funds not to mention working out which owners corporation the funds belonged to that they borrowed from. Each owners corporation needs their own set of bank accounts and financials that are specific to the money that is put in to cover the costs for that owners corporation rather than those funds being pooled. Additionally, the owners corporation should have Annual General Meetings etcetera, where financials are reviewed and endorsed by the owners corporation management. Terms of reference/position descriptions articulating duties should also be put in place. Option 4B allows for some exceptions where pooling the funds would be permissible and this applies obviously, where the owners corporation has consented and where the pooling of funds is in a statutory trust account held by a legal practitioner, licensed estate or licensed conveyancer. HHS approves of this approach because they would be subject to more financial scrutiny than the current non-statutory trust arrangements in place.

2. RESPONSIBILITIES OF DEVELOPERS, OCCUPIERS AND COMMITTEE MEMBERS

2.1. Developers' obligations

Overall, from a developer's perspective, the Options 5A, 5B and 5C are a further set of obligations on the developer, all of which cost the developer and therefore the purchaser more money.

2.1.2 Obligations regarding building defects

HHS approves Option 5D Introduce specific obligations for developers or builders regarding building defects, as it provides the owners with more information, knowledge and protection when it comes to the common property and sets out who is responsible for what, when it comes to building defects. HHS have had instances where they have not been able to go after the builders for defects, which in HHS' thinking they should have been able to pursue. Having the provision to provide all of this information gives HHS a better standing in that regard from an asset management point of view.

From a developers perspective Options 5A, 5B and 5C are a further set of obligations on the developer, all of which cost the developer and therefore the purchaser more money. In relation to builder defects, there is normally a contract with the builder that has at least one year of maintenance guarantee in the sense of defects maintenance. As long as you have that contract, that is your first line of protection. The next line of protection is all the regulations and safeguards in building which are effectively a seven-year guarantee with a builder. In this light, Option 5D should provide ample protection going for the builder and not the developer. HHS maintains there should be no further obligations on the developer beyond the current obligations.

2.2 Duties and rights of owners and occupiers

HHS supports Option 6A – Clarify the right to inspect owners corporation records and align the basis for invalidating resolutions and rule believing it provides transparency and is more equitable for lot owners.

2.2.2 Access to Private lots

HHS agrees with Option 6B – Give owners corporations access to private lots to repair common property.

The reason HHS agrees is that it supports the overall maintaining of the asset of a building and, if there is an area that a lot owner does not allow access to, then it could potentially affect the other lot owners. If the issue could reasonably affect other lot owners or the asset in general then there should be provision for the owners corporation to access those private lot to undertake work that relates to the common property.

2.2.3 Alternations and repairs to common property

HHS backs Option 6C – Prohibit lot owners from making alterations or repairs to common property. There needs to be a consistent approach to the management of common areas as there are obviously fees associated with that, which are distributed across the lot owners. There should be a resolution passed for any works that are undertaken within the common areas by the appropriate trades. HHS would not want to see any lot owners trying to take responsibility



for altering common areas as that is fraught with all sorts of potential disputes, and defeats the purpose of having an owners corporation in the first place.

2.2.4 Rule – making powers and Model rules

HHS is in agreeance with Option 6F – Develop a Model Rule for fire safety advice to tenants and provide for owners corporations rules to be part of tenancy agreements. The interference with the fire safety in multi-level sites is a huge concern from an owners corporation point of view and quite costly when people are interfering with the fire service system. Tenants need to know what the rules are about, be educated about the fire system in the particular building that they live in and, what the consequences are for interfering in the fire system. Any owners corporation rules that are determined by the owners corporation obviously in consultation with the lot owners should form part of the tenancy agreement so they are enforceable. At the moment owners corporation rules sit separately, so for example in Victoria we have the Residential Tenancies Act in which the lease agreement and issues within the lease agreement are enforceable but the owners corporation rules, are just that, rules. If you could tie the owners corporation rules to the tenancy agreement and make them enforceable that would then provide for accountability when there are breaches against those rules. If they are to be enforceable, consultation with all the owners is a necessity to ensure that matters are kept on track and to ensure that in principle, none of the rules are objectionable to any of the lot owners.

2.2.5 Responsibility for compliance with owners corporation rules

HHS agrees with Option 6G – Make lot owners ultimately responsible for compliance by their tenants and guests with owners corporation rules. As a lot owner as in any lease agreement you are responsible for the tenants you put in, for ensuring the rules are enforced and responsible for any breaches of those rules.

2.3 Duties of committee members

HHS supports Option 7B – Reformulate the duties of committee members according to the Associations Incorporation Reform Act model. It particularly talks about committee members discharging their duties with reasonable care, in the best interests of the association for the proper purpose and not making improper use of their office or of information for their own personal gain. Option 7B sets out the responsibilities clearly and is in line with legislation that formalises the position in regards to responsibilities. Currently, the duties of committee members are too informal and there is no accountability for the failure to follow its rules.

2.4 Powers of owners corporations regarding community building, water rights and abandoned goods

HHS does not necessarily agree with Option 8A – Give owners corporations a community building function. HHS is concerned, as stated in the Consumer Property Law review paper, that this option gives scope for ‘disputes in some owners corporations between residents who do not have an interest in community building and those who do and who might seek to use its official status to get expenditure on the matter.’ Implementing Option 8A would come at a cost and people who are not necessarily interested in having anything to do with other people in the building aren’t going to want to spend their money so others can socialise. It creates an assortment of problems and raises a barrage of questions such as to who gets to attend, where the events are held, how much will it cost etcetera. Whether or not a particular building has a community building element should be an individual owners corporations decision that is passed by a resolution. Putting it in an act could tie people to something that maybe only a minority of people would like to pay for and be involved with.

2.4.2 Water rights

HHS agrees with Option 8B – Permit owners corporations to deal with water and welcomes the amendment to include ‘water that falls, occurs or flows in common property’ and to permit ‘owners corporations to deal with water rights as with any other type of personal property.’



2.4.3 Abandoned goods

HHS supports Option 8C – Permit owners corporations to dispose of abandoned goods on common property. HHS' view is that owners corporations should be able to deal with abandoned goods as per the current Residential Tenancies Act legislation most importantly, abandoned goods that block access particularly in regards to fire safety. If goods block the egress from the building, for fire safety purposes, the owners corporation should be able to just remove those goods. The current Abandoned Goods Act requires you to give notice and store goods for a particular period of time. Even being able to remove and store the abandoned goods would be a sufficient response to ensure the safety of the rest of the occupants in the building.

3. DECISION- MAKING WITHIN OWNERS CORPORATIONS

3.1 Voting thresholds and the use of proxies

HHS disagrees with Option 9A – Restrict proxy farming and committee proxies, and prohibit voting limitations in sale contracts. As it currently reads, Option 9A states that committee members can only give a proxy to another committee member. If you are a landlord who is an owner of multiple owners corporations then it's a necessity to be able to give a proxy vote to the owners corporation manager as attendance is impractical if you are covering a large number of owners corporations meetings. If Option 9A allowed owners to also give their proxy vote to owners corporation managers, as is the current approach, HHS would agree with this option.

3.1.2 Decision making powers for managers

HHS agrees with Option 9B: Give owners corporation managers greater authority to make decisions and Option 9B -1: Developing Model Rules. The owners corporation manager should have the ability to pass interim resolutions which are then followed up via a letter or vote within 14 days of those interim resolutions being passed. Formalising this process creates efficiencies in order for decisions to be made and issues addressed, and allows urgent decisions to be made when an owners corporation cannot rally up twelve owners to make a decision. The exclusions in Option 9B are also important and need to be kept, notably any resolution that involves an amount greater than 10 per cent of the budget or involves the manager's contract. Option 9B -2: Amending the Act was seen to be unnecessarily burdensome for owners corporation.

3.1.3 Special resolutions

HHS does not agree with Option 9C: Treat unopposed special resolutions as passed or as interim resolutions. If there were no opposing votes then they would not be counted as votes being for, and if something requires a special resolution then there should be a majority of people to pass that. HHS prefers the alternative that such a resolution could be deemed to be an interim. Maintaining the status quo is the preferred option of HHS for interim special resolutions requiring 50 % in favour, no more than 25 % opposed. HHS believes If an interim resolution can be made and then provision for the resolution post that it would facilitate effective decision making.

3.2 Committee size and processes

HHS agrees with Option 10A – Reduce the maximum committee size from 12 to seven members and supports the provision for owners corporations to resolve on a larger committee, up to 12 members. The reason being that smaller owners corporations cannot be expected to realistically be able to get a large quorum of people.

3.2.2 Committee ballots

HHS approves of Option 10B: Permit the chair or secretary of the committee to arrange a ballot. HHS believes this options supports effective decision making. In the event that not everyone can attend a meeting one person in the committee such as the chair or secretary can be tasked with sending out a ballot.



4. DISPUTE RESOLUTION AND LEGAL PROCEEDINGS

4.1 Internal dispute resolution process

HHS supports Option 11B – Revise Model Rule 6 (Dispute Resolution). This would align with the Associations Incorporations Reform Act 2012 and give clearer guidelines. HHS rather than seeking legal action first, prefers that dispute resolution be sought. HHS supports each party being given the opportunity to be heard and maintaining the internal dispute resolution process in line with the Associations Incorporations Reform Act 2012. Rather than the internal dispute resolution process delaying action at VCAT for things like fees, they sit separately and can be concurrently pursued.

4.2 Civil penalties for breaches of owners corporations rules

HHS agrees with Option 12A: Increase maximum civil penalties to \$1,100, believing that would give enough incentive for owners corporations to seek compensation with any amount lower making it not worthwhile.

HHS supports Option 12C: Retain VCAT's power to impose penalties but allow owners corporations to retain penalties, maintaining that VCAT as the current ruling body should retain the legal process for imposing these penalties rather than this being handed over to owners corporations. Penalty decisions should be consistent with other RTA, VCAT rules and follow the same legal processes that any other tenant would follow regardless of where they live and, those penalties should be imposed by VCAT. HHS does not agree with money going to a Victoria property fund because the owners corporations should be able to retain the penalties if they have paid money to effect the legal proceedings. If they have been found in favour of, they should be able to use those funds to cover the costs of the legal proceedings and also to remedy any issues that might have been caused by the breach. Otherwise, there is no incentive for owners corporations to enforce penalties if they cannot get the recovery to make good from those penalties.

4.3 Initiating legal proceedings

HHS supports maintaining the status quo and does not support any of the options put forward. The decision, time and significant monetary investment of commencing any legal proceedings outside of normal debt collection which is already provided for, in HHS' opinion, is a serious matter and should not be entered into lightly. Equally, a special resolution should be required.

5. DIFFERENTIAL REGULATION OF DIFFERENT – SIZED OWNERS CORPORATIONS

HHS is pleased to see this issue addressed in the Consumer Property Law review paper. HHS' preferred option is Option 14B – Introduce a four-tiered system of owners corporations, because the reality is that there are lots of small owners corporations where the task of applying the regular owners corporations requirements is onerous such as setting up committees and getting audited financial statements.

6 FINANCES, INSURANCE AND MAINTENANCE

6.1 Defaulting lot owners

HHS agrees with Option 15A – Require lot owners to lodge bonds for unpaid fees. This option is in alignment with the Residential Tenancies Bond Authority and consistent with other RTA and VCAT legislation in regards to tenancies and creates a seamless flow in the tenancy environment.

6.2 Insurance

HHS supports Option 16A – Increase the level of public liability insurance and correct anomalies concerning plans of subdivision that contain separate buildings.

6.3 Maintenance plans and maintenance funds

HHS supports Option 17A – Introduce new thresholds for mandatory maintenance plans and funds. This option allows for the necessary maintenance for long term liability of assets while still allowing for flexibility of the use of funds if not required. Whilst owners corporations need to have a maintenance plan and need to put enough money aside for



maintenance into a particular fund the owners corporation would not be bound to only use the maintenance funds for implementation of the maintenance plan. If unplanned works arose that they needed to pay for out of the maintenance fund there would be the flexibility to do that.

6.4 Increased expenditure arising from lot use

HHS agrees in principle with Option 18 – Allow owners corporations to recover costs arising from particular uses of lots. However, HHS feels this may cause disputes about how you would apportion the fees based on use or other criteria making it difficult to be equitable. HHS believes what should occur is that a standard fee and additional charges are apportioned only to the owners who use their lots differently for maintenance costs that are incurred beyond the standard fees. How owners corporations manage this would have to be in the form of a resolution that the owners corporations passes because of the variables involved in determining the maintenance costs of each individual lot. Alternatively, there could be a standard fee and any costs above the fee could be borne by the lot owner.

7. PART 5 OF THE SUBDIVISION ACT

7.1 Common Seals

HHS agrees with Option 19 – Remove the requirement for an owners corporation to have a common seal believing it to be an out dated practice. The common seal is not necessary as long as there are two committee members who are signatories and, there is a resolution that goes with the transaction for accountability.

7.2 Procedure for initial setting of and changes to lot liability and lot entitlement

HHS supports Option 20D- set lot liability and entitlement according to specified criteria because it is completed by the building surveyor and not by the developer. It is prescriptive and it is an equitable approach, as the developer has a stake, which could be a conflict of interest.

From a developer's perspective, HHS supports Option 20A. HHS agrees with having either a five or a ten-year review. HHS raised concern about the requirement for unanimous resolution believing that this is too high a bar to set, recommending instead, a 75 per cent requirement so that changes can more effectively be passed.

7.3 Sale and redevelopment of apartment buildings

HHS agrees with Option 21B – Reduce the threshold to 75 per cent for all owners corporations - less restrictive model. HHS believes 21B has better protection for the owners. Whilst the owner is not automatically referred to VCAT they have the right to apply to VCAT but it is actually the respondent's duty to prove that the economic or social benefits as a whole would be greater than the disadvantage to the particular lot owner that did not consent to the building being sold. It also provides that the proposed compensation for purchasing their home is fair and there is a prohibition on any crossed orders being made against applicants in unsuccessful challenges. Option 21A has no provision for the owner being unsuccessful in a challenge.

From a developer's perspective, HHS supports Option 21A – Reduce the threshold to 75 percent for all owners corporations - New South Wales model. If you reduce the threshold from unanimous to 75 percent the changes that need to be made can more readily be made.

Conclusion

Haven; Home, Safe welcomes the legislative changes proposed to be made to the Owners Corporations Act 2006, which it believes are required in order play catch up with the reality of owners corporations in 2016. The changes proposed acknowledge the need to make the decision-making processes more efficient and transparent and recognise the need to ensure the continued professionalism and expertise of owners corporation managers. In addition, the reforms address the need for more protections and accountability, at the same time acknowledging the need to simplify the processes for smaller owners corporations.



HHS, recognising that the States and Territories are in reality separate entities with their own building regulations however where possible needs to advocate for a national response to an owners corporations regulatory model. Creating such a model HHS believes, can encourage an environment of transparency, consistency and surety.